

CLAIMS—CITIZENS OF GEORGIA vs. CREEK INDIANS.

[To accompany bill H. R. No. 128.]

DECEMBER 27, 1831.

Mr. THOMPSON, of Georgia, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred a resolution directing an inquiry into the expediency of providing by law for carrying into full effect the provisions of the 4th article of the treaty of 1821, between the United States and the Creek Indians, so far as regards the claims of the citizens of Georgia, for injuries committed prior to the year 1802, make the following report:

That, by the 4th article of the treaty concluded at the Indian Spring, on the 8th day of January, 1821, between the United States and the chiefs, head men, and warriors of the Creek nation of Indians, the United States stipulated and bound themselves to pay to the State of Georgia, in five annual instalments, without interest, the balance which should be found due from the said nation to citizens of said State; provided, the same should not exceed the sum of two hundred and fifty thousand dollars, to be ascertained by adjustment to be made, conformable to reference agreed upon, on the day and year aforesaid, between commissioners on the part of Georgia and the said chiefs, head men, and warriors of said nation, on condition that the said commissioners should execute a release to said nation, of all claims of citizens of said State, of whatever description, against said Indians, for property taken or *destroyed* by said Indians, prior to the act of Congress passed in 1802, regulating trade and intercourse with Indian tribes. That the commissioners on the part of Georgia, did, in due form, execute the release contemplated by the treaty, which release, conjointly with the assumption by the United States, of the debt due from the said nation to citizens of Georgia; and the acceptance by the commissioners of Georgia, of the obligation thus insured by the United States, not only effected an entire exoneration of said Indians from *all claims* of the citizens of Georgia against them, but placed the United States in the precise relation to the Georgia claimants in which said Indians stood, with this single exception: the United States were not bound, in any event, to pay a sum exceeding two hundred and fifty thousand dollars; whereas the aggregate amount of the claims of the citizens of Georgia, against said Indians, exceeded that amount. That the reference by the agreement between the

Georgia commissioners and the chiefs, head men, and warriors of said nation, was made to the President of the United States, *in his official character*, who in the adjustment of the claims so referred, adopted a rule of construction foreign, and contrary, to the obvious intentions of the parties who made the reference. It is clear that the treaty referred to, was intended to supersede all other treaties made with said Indians, in reference to said claim: and yet, the rule of construction adopted by the President, consults other treaties made with those Indians, long prior to the treaty of 1821. It is equally clearly deducible, from the treaty of 1821, and the agreement between the Georgia commissioners and those Indians, that all claims which originated prior to the passage of the act of Congress before referred to, predicated upon the taking *or destruction* by the Creek Indians, of property which belonged to citizens of Georgia, if satisfactorily established, were intended, by the contracting parties, to be allowed and paid out of the two hundred and fifty thousand dollars which was stipulated to be paid by the United States. Yet the rule of construction adopted by the President, in the adjustment of the claims so referred, excludes not only all claims founded upon the *destruction* of property by said Indians, and upon the increase of slave property, but the claim for interest on the amount of the true value of the property so taken or destroyed, is also excluded.

By an examination of the 4th article of the treaty before referred to, with the agreement entered into between the Georgia commissioners and the chiefs, head men, and warriors, of the creek nation of Indians, it will be perceived that claims founded upon the *destruction* of property, are included, clearly contemplated, and provided for. Therefore, as no satisfactory reason has been, or can be advanced, why this class of claims should be totally excluded, justice to the claimants, as well as a regard to the obvious intentions of the contracting parties, requires that all claims coming within this description, which may be satisfactorily established, should be allowed and paid.

While it is readily admitted that the United States are exempted from the payment of interest on the several instalments, by them assumed, to the Georgia claimants, by the express provisions of the treaty of 1821, your committee believe that a careful investigation of the merits of the claim of citizens of Georgia to interest on the amount of their claims, will lead to the conclusion that interest ought to be allowed and paid out of the \$250,000, (the maximum stipulated to be paid by the United States) on all claims which have been or may be established, founded on the capture and detention, as well as upon the destruction by said Indians, of property which, prior to the date of the act of Congress, regulating trade and intercourse with Indian tribes, belonged to citizens of Georgia. By the treaty of 1821, before referred to, the United States stipulated to pay to the State of Georgia, a sum *not exceeding* \$250,000, as part consideration for land which the Creek nation of Indians ceded, by said treaty, to the United States. Under the operation of the rule of construction adopted by the President of the United States, in the adjustment of the claims referred to him, the sum of \$101,319 22 alone has been applied to the payment of those claims, leaving, of the \$250,000, an unexpended balance of \$148,680 78. If none of the claims provided for by the treaty remained still unpaid, a question would arise, as to whom this large balance rightfully belongs, the United States or the Creek nation of Indians? It is believed, that a reference to the treaty, with the transactions immediately connected with it, will afford to the House sufficient reason to conclude, that the Indians considered the

\$200,000 which the United States stipulated to pay *in money to the Creek nation*, with a full and final release from the claims of citizens of Georgia, a full equivalent for the territory ceded by the treaty; and that those Indians did not look to any balance of the \$250,000, which might remain after the payment of the Georgia claims, as belonging to the nation; for, it is reasonable to suppose, that the Georgia commissioners, who represented the claimants, and presented to the negotiating parties a list of claims of citizens of Georgia, the evidence of which had been collected under the superintending control of the Government of that State, amounting, in the aggregate, to more than \$280,000, urged the stipulation of a sum sufficiently large to cover the claims which might be established against the Creek nation; while the commissioners, on the part of the United States, labored for the stipulation of as limited a sum, as a strict regard to a commendable liberality, a desire to effect an adjustment of a difficulty of long standing, the principles of justice, and the interests of the United States, would justify or require: and that the Indians, satisfied to receive the \$200,000 in money from the United States, with an entire release from the Georgia claims, as an equivalent for the territory ceded by them to the United States, were content, therefore, to leave the adjustment of the amount which should be stipulated to pay those claims, to the Georgia and the United States' commissioners. It is obvious to your committee, that while the Indians considered the \$200,000 stipulated, in the treaty, to be paid in money to the nation by the United States, with an entire release from all claims of the citizens of Georgia against the Creek Indians, a full and fair equivalent for the territory ceded by the treaty; that the United States considered the \$250,000, stipulated to be paid by them to the Georgia claimants, with the \$200,000 stipulated to be paid by them in money to the Indians, not more than an equivalent for the territory so ceded by the treaty. It follows, therefore, that the Creek Indians have no claim to the unexpended balance of the \$250,000 stipulated to be paid by the United States to the Georgia claimants. The question then occurs, whether the Georgia claimants have not a better right to such unexpended balance, or to so much of it as will pay them a reasonable per cent. interest from the date of the commencement of their claims, until final payment on the amount of claims which have been, or may be established, than the United States have? The admission of those claims now, is conclusive evidence that the claimants were entitled to have received from those Indians, at the time the property was taken or destroyed, the whole amount of money which has been, or may be adjudged to the claimants as the then value of their property. Many of the claimants may have lost their all by the depredations of those Indians; in consequence of which they, perhaps, have ever since waged a ceaseless conflict with poverty and its concomitant evils.

They were deprived of the use of the capital they had vested in the property which was thus taken away or destroyed; and which may have formed their only means of bettering their pecuniary condition. The use of any and all property, either on hire, rent, or lease, entitles the bona fide owner, by the universal suffrage of mankind, to some consideration for such use. While the claimants have been deprived of the use of the capital which they had vested in the property thus taken away or destroyed by the Indians, those Indians have been in the enjoyment of the benefits resulting from its use. Justice, therefore, requires that a reasonable allowance should be made in favor of the claimants for the damages which they have sustained by being wrongfully deprived of the use of their property. A careful examin-

ation of the merits of the claims, founded upon the increase of the female slaves which were taken and carried away by those Indians, would, it is believed, lead to a similar result. Those who are at all conversant with the considerations which form the criterion by which the value of slave property is estimated, know that a much higher value is set on a female slave, in consequence of an anticipation of increase. Therefore, as the claimant, whose female slave was taken by those Indians and carried away, had a property in expectancy in the issue of such female slave, principles of common sense and common justice would award to the rightful owner, a restitution of such increase, or an equivalent in lieu thereof, especially, as by the laws of Georgia (which is a common law principle,) the issue of a female slave follows the condition of the mother: hence, in an action of trover and conversion, for the recovery of a female slave who may have had issue after the conversion, if the plaintiff proves his right of property in, with his right of possession of the mother, he recovers such issue with the mother. But, aware as your committee are, of the great, not to say insuperable difficulties which would oppose an equitable adjustment of this class of claims, and believing that an allowance of an annual interest of six per cent. on the true value of *all* property taken or *destroyed*, will not only be a means best calculated to meet the ends of justice, but a fair compromise of, and equivalent for, the the claims founded on the increase of slave property. Your committee therefore respectfully recommend, as a full and final adjustment of the claims of citizens of Georgia, under the 4th article of the treaty before referred to, that an annual interest of six per cent. be allowed and paid on all claims of citizens of Georgia, which have been or may be established against the Creek Indians, under the provisions of the treaty of 1821, between the United States and the Creek nation of Indians, to be calculated from the date of the origination of the claims respectively, the amount of the principal to be determined by the true value of the property at the time it was taken and carried away or destroyed. If the aggregate amount of claims which have been, and hereafter shall be established and allowed, with the interest thereon, shall be found to exceed the sum of two hundred and fifty thousand dollars, your committee recommend that, after the payment of the principal of the claims respectively, a pro rata allowance for interest be paid out of the unexpended balance, if any, to the respective claimants.

Believing that the provisions of the treaty of 1821, the intentions of the contracting parties, as well as the principles of justice, require that claims of citizens of Georgia, founded upon the capture and detention, and upon the destruction, by the Creek Indians, of property, which prior to 1802, belonged to those citizens, with the claim of interest on the amount which has been or may be adjudged to the claimants as the value of their lost property, ought to be allowed and paid out of the \$250,000 stipulated to be paid by the United States to the State of Georgia, the committee herewith report a bill.